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No. 91-2012

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

JACKIE HOLDER, individually and in his official capacity as County Commissioner for Bleckley County, Georgia, and ROBERT JOHNSON, individually and in his official capacity as Superintendent of Elections for Bleckley County, Georgia,

Petitioners,

v.

REV. E. K. HALL, SR., DAVID WALKER, U. S. DONALDSON, RICHARD HARRIS, WILLIE ATES, REV. WILSON C. ROBERSON, and NAACP Chapter of Cochran/Bleckley County,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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QUESTION PRESENTED FOR REVIEW

1. Whether the decision of the court of appeals that at-large elections for the commissioner of Bleckley County, Georgia violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, was clearly erroneous?

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STATEMENT OF THE CASE

Inaccuracies in Petitioners' Statement

Petitioners' (hereinafter "Bleckley County") statement of the facts contains several inaccuracies. The Eleventh Circuit did not, as Bleckley County contends, rule that the sole commissioner form of local government in Georgia was *per se* unlawful. Petition for Writ of Certiorari, p. 3 (hereinafter "Petition"). According to Bleckley County, "[i]n Georgia there are presently 17 counties utilizing this [sole commissioner] form of local government. The Eleventh Circuit has determined this form of local government to be violative of the Voting Rights Act." *Id.* What the court of appeals actually held was that "the totality of the circumstances *found in Bleckley County* clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.' " Appendix to the Petition 86 (emphasis added) (hereinafter "App.").

Bleckley County has also asserted for the first time in its Petition for Writ of Certiorari the question whether or not the at-large elected sole commissioner form of government may be challenged under Section 2 of the Voting Rights Act, 42 U.S.C. §1973.[1] The county never raised such issue in its answer, and acknowledged in the district court that "[t]he Eleventh Circuit in *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547 (11th Cir. 1987) applied the *Gingles* guidelines to a challenge against the single

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[1] See, Questions Presented: "1. Whether the Voting Rights Act of 1965 empowers the courts to alter local governments to ensure proportional minority representation?" Petition, p. i.

commissioner form of government." *Hall v. Holder*, Civ. No. 85-242-2-MAC (M.D.Ga.), Defendants' Proposed Conclusions of Law, p. 5, May 9, 1990.[2] Bleckley County argued further in the court of appeals that "[t]he trial court was *correct* on applying the three-part test mandated by the Supreme Court in *Gingles*, which was applied by this Court to the sole commissioner challenge in *Carrollton*." *Hall v. Holder*, No. 91-8306 (11th Cir.), Brief of Appellees, p. 21, Aug. 12, 1991 (emphasis added). Bleckley County thus conceded in both courts below that Section 2 was available to challenge the at-large elected sole commissioner form of government.[3]

While this Court has never considered a challenge to a sole commissioner form of local government on the merits, Bleckley County failed to note that in *Duncan v. City of Carrollton, Georgia, NAACP*, 485 U.S. 936 (1988), the Court refused to grant certiorari to review the decision of

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[2] As the court of appeals noted in this case, while the sole commissioner form of government "is unusual," the minority plaintiffs' claim "is not a unique challenge, however, and we have already held that § 2 challenges to sole commissioner forms of government are subject to the same analysis employed by the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 . . . *Stallings*, 829 F.2d at 1549." App. 67-8. In addition to Carroll County, sole commissioner systems have been abolished in Telfair, Webster, and Wheeler Counties as a result of Section 2 litigation. Clark v. Telfair County, Georgia Commission, Civ. No. 287-25 (S.D.Ga. Oct. 26, 1988); Nealy v. Webster County, Georgia, Civ. No. 88-203 (M.D.Ga. March 16, 1990); Howard v. Commissioner of Wheeler County, Georgia, Civ. No. 390-057 (S.D.Ga. July 10, 1992).

[3] Bleckley County did not argue to the contrary in its Suggestion of Rehearing En Banc.

the court of appeals in *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547 (11th Cir. 1987), which reversed the decision of a district court dismissing a Section 2 challenge to the at-large elected sole commissioner form of government in Carroll County, Georgia.

Bleckley County also claims that "[c]itizens of Bleckley County prefer the sole commissioner form of government." Petition, p. 5. Some white citizens of the county may prefer the sole commissioner form, but as this litigation demonstrates black citizens do not.

Omissions in Petitioners' Statement

Bleckley County omitted numerous facts, stated below, that are material to the consideration of the questions presented.

A. Racial Bloc Voting

The court of appeals found that "the evidence conclusively establishes a pattern of racially polarized voting in Bleckley County." App. 84-5. That evidence included:

1. County wide regression analysis data revealed that 60.8% of black voters, but only 0.9% of white voters, supported the black candidate, Rev. Jesse Jackson, in the 1984 presidential primary.[4] App. 79.

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[4] Statistical analysis was limited in this case because of the small number of black candidates for county wide offices, and because in August, 1984, the year in which respondent Hall ran for judge of probate court, the county reduced its polling places from eight to one. App. 65 n.3, 78 n.13. Regression and

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2. Exit poll data indicated that over 90% of the black electorate supported Jackson in the 1988 presidential primary, while white support was less than 2%. App. 79-80.

3. Black candidates were regularly defeated by white candidates in at-large elections for the City of Cochran, the county seat and the largest municipality in the county.[5] After elections were restructured as a result of this law suit so that the city had a majority black district, black candidates were elected as the representatives of the majority black district. App. 66 n.5, 81.

4. The only black to run in a county wide election, respondent Hall, was soundly defeated. After this law suit was brought and a single member district plan was adopted for the county board of education, Hall was elected to the board from the majority black district. App. 78 n.13, 81.

5. The 1974 Lieutenant Governor election involving J.B. Stoner, an avowed white racist, the 1966 and 1974

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homogeneous precinct analysis depend on the presence of multiple polling places, or data points. Respondents did, however, produce evidence of the results of a total of 30 elections – four county wide and 22 municipal involving viable black candidates, and four others in which race was a significant issue.

[5] The only exception was Willie Basby who was first elected under the city's plurality vote system in 1973 in a contest with two whites, getting 39% of the vote. Thereafter, Basby ran as an incumbent, or having been an incumbent.

Gubernatorial elections involving Lester Maddox, a former governor and segregationist, and the 1968 presidential election involving then-segregationist George Wallace, showed "that a substantial number of Bleckley County's voters were highly susceptible to racist, segregationist appeals as late as the mid 1970's, and that they voted accordingly." App. 82.

6. "Bleckley County had enforced racial segregation in all aspects of local government and local government services until forced to change by federal legislation in the 1960's." App. 83.

7. "Bleckley County had debated and fought desegregation in all aspects of public life, continuing its resistance until as late as the early 1970's." App. 83.

8. "Local government had deprived blacks of the opportunity to participate in public life and government, even prohibiting blacks from registering to vote and from voting until well into the 1960's." App. 83.[6]

9. "[T]he black citizens of Bleckley County continue to suffer from the effects of discrimination," and their "depressed socio-economic situation 'hinders the ability of and deters black residents of Bleckley County from running for public office, voting and otherwise participating in the political process.' " App. 83.

10. There is only one polling place in the entire county (which has 219 square miles), a building in

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[6] No blacks were appointed as deputy registrar until 1984, and no blacks were appointed as poll managers until after 1986.

Cochran belonging to an all white civic club. App. 65, 83. Prior to 1984, when precincts were consolidated, there were a number of polling places "providing ready access to voters in the outlying areas of the county." App. 65 n.3.

11. Organizations in Bleckley County, which frequently serve as forums for political candidates and political discourse, are "racially exclusive" and "give blacks and whites in Bleckley County a different exposure to the candidates running for local, state, and national office." App. 84.

12. The experiences of seasoned local black politicians showed that "as a practical political matter, blacks are unable to sponsor candidates for Bleckley County's sole commissioner office because such candidacies are futile." App. 79.

13. The district court judge concluded at the end of the trial that:

> having run for public office myself, I'll guarantee you, under the circumstances, I wouldn't run if I were black in [Bleckley] county. You're going to put your hard earned time and shoe leather campaigning throughout this county . . . under these circumstances?

App. 79.

B. Geographic Compactness

Both the district court and the court of appeals found that black voters in Bleckley County are sufficiently numerous and geographically compact to constitute a majority in a single member district. App. 75.

C. Political Cohesion

The court of appeals found that "the record evidence . . . coupled with the existence of racially polarized voting, conclusively reveal that the *Gingles* requirement of political cohesiveness has been satisfied." App. 85.

D. The Totality of Circumstances

The court of appeals held that respondents had satisfied the test for proving a violation of Section 2 prescribed by the Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), that at a minimum the burden was shifted to the county to offer rebuttal evidence, and that "[n]o meaningful rebuttal evidence" was offered. App. 86. The court also concluded that "the totality of the circumstances found in Bleckley County clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.' " *Id.*

Finding a violation of Section 2, the court of appeals reversed and remanded "for the imposition of a remedy." App. 86.

SUMMARY OF ARGUMENT

The court of appeals held only that the use of the at-large elected sole commissioner system based on "the totality of the circumstances *found in Bleckley County* clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.' " App. 86 (emphasis added). The Georgia counties that still use the sole commissioner system (17

out of 159) will not, therefore, be directly affected by the decision in this case, unless minorities in those counties can demonstrate that the systems deny or abridge the equal right to vote on the basis of race or color within the meaning of Section 2.

Bleckley County seeks to raise an issue which it never presented to either of the courts below, *i.e.*, whether the sole commissioner form of government can be challenged under Section 2. The petition should be denied for this reason. *Youakim v. Miller*, 425 U.S. 231, 234 (1976).

This Court has recently reiterated that the Voting Rights Act, including Section 2, "should be interpreted in a manner that provides 'the broadest possible scope' in combating racial discrimination." *Chisom v. Roemer*, 111 S.Ct. 2354, 2368 (1991). The Court has also rejected in *Houston Lawyers' Association v. Attorney General of Texas*, 111 S.Ct. 2376 (1991), the claim, virtually identical to the one Bleckley County has attempted to raise here, that Section 2 was unavailable to challenge the method of electing so-called "single-member offices."

The court of appeals properly determined the existence of racial bloc voting by considering the totality of the circumstances existing in Bleckley County. In small rural counties such as Bleckley election data and the opportunities for purely statistical analysis will necessarily be limited. *Thornburg v. Gingles*, 478 U.S. 30, 57 n.25 (1986).

The findings of the court of appeals that voting was racially polarized and that Section 2 had been violated were based upon correct legal standards, and were not

clearly erroneous. *Thornburg v. Gingles, supra*, 478 U.S. at 79.

REASONS THE PETITION SHOULD BE DENIED

I. The Issues Are not Substantial

Bleckley County erroneously states that the court of appeals invalidated the sole commissioner form of government in the 17 (out of 159) counties in Georgia which utilize it. The court did not. It held only that the use of the at-large elected sole commissioner system based on "the totality of the circumstances *found in Bleckley County* clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.' " App. 86 (emphasis added). The counties that still use the sole commissioner system will not be directly affected by the decision in this case, unless minorities in those counties can demonstrate that the systems deny or abridge the equal right to vote on the basis of race or color within the meaning of Section 2.

Having misstated and exaggerated the holding of the court of appeals, Bleckley County also seeks to raise an issue which it never presented to and was never addressed by either of the courts below, *i.e.*, "Whether the Voting Rights Act of 1965 empowers the courts to alter local governments to ensure proportional minority representation?" Petition, p. i.[7] In both lower courts Bleckley

[7] The claim that the decision of the court of appeals ensures "proportional minority representation" is entirely a

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County conceded that Section 2 and the analysis in *Thornburg v. Gingles*, 478 U.S. 30 (1986), applied to challenges against the single commissioner form of government. In the court of appeals, moreover, the county defended the decision of the district court, and argued that it "was correct on applying the three-part test mandated by the Supreme Court in *Gingles*." Brief of Appellees, p. 21. Having failed to raise the question below whether Section 2 can be used to challenge the at-large elected sole commissioner form of government, Bleckley County should not be allowed to assert it here.

"Ordinarily, this Court does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976); *Delta Airlines v. August*, 450 U.S. 346, 362 (1981) (question presented in petition but not in court of appeals "is not properly before us"). This is not a case in which exceptional circumstances exist, or are even

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red herring. The court of appeals never used such language, nor did it require that minorities be proportionately represented. It simply found a Section 2 violation, reversed the district court and remanded the case "for the imposition of a remedy." App. 86. Congress has provided that plaintiffs *are* entitled to a remedy for the violation of their rights under Section 2, one which "completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice." S.Rep. No. 417, 97th Cong., 2d Sess. 31 (1982). Although the court of appeals indicated that a remedy "could well be modeled after" the plan for the board of education, no remedy has yet been imposed, and thus the issue whether any remedy the court might impose complies with the Voting Rights Act is not before the Court. App. 86 n.20.

urged, for relaxation of the rule. *Stone v. Powell*, 428 U.S. 465, 481 n. 15 (1976). Relatively few jurisdictions in the state use the sole commissioner system, and as noted *supra*, at n.2, several jurisdictions have recently abandoned their systems for a board of commissioner form of government, the predominant form of county government in the state. Thus, this case does not present an issue that is either important or of general application that needs to be resolved by this Court, particularly in the absence of any analysis by the lower courts.

Even if Bleckley County's contention went to the jurisdiction of the trial court, and is thus noticeable at any time, *Sumner v. Mata*, 449 U.S. 539, 547 n.2 (1981), it would still be without merit. The sole commissioner system is the ultimate form of at-large elections. In jurisdictions where voting is racially polarized the sole commissioner system, coupled with the state's existing majority vote requirement, means that blacks could never have the equal opportunity to elect candidates of their choice to the legislative and executive branches of county government. It is difficult to believe that such a closed and racially exclusive system of elections could ever be deemed wholly insulated from challenge under Section 2.

This Court has recently reiterated that the Voting Rights Act, including Section 2, "should be interpreted in a manner that provides 'the broadest possible scope' in combating racial discrimination." *Chisom v. Roemer*, 111 S.Ct. 2354, 2368 (1991) (applying Section 2 to the method of electing judges). The Court has also rejected in *Houston Lawyers' Association v. Attorney General of Texas*, 111 S.Ct. 2376 (1991), the claim, virtually identical to the one Bleckley County has attempted to raise here, that Section

2 was unavailable to challenge the method of electing so-called "single-member offices." In *Houston Lawyers' Association* the state argued that the at-large method of electing trial court judges was immune from Section 2 challenge because the judges were single-member office holders, *i.e.*, they exercised their jurisdiction independently and throughout the counties from which they were elected. The Court rejected the argument.

> It is equally clear, in our opinion, that the coverage of the Act encompasses the election of executive officers and trial judges whose responsibilities are exercised independently in an area coextensive with the districts from which they are elected. If a State decides to elect its trial judges, as Texas did in 1861, those elections must be conducted in compliance with the Voting Rights Act. . . . Exempting elections for single-member offices from the reach of § 2 altogether can therefore not be supported.

111 S.Ct. at 2380-81.

Bleckley County's claim that the method of electing its county commissioner is beyond the reach of Section 2 is similarly without merit, and does not present a substantial issue for review by this Court.

II. The Court of Appeals' Finding of Racial Bloc Voting Was not Clearly Erroneous

Bleckley County argues that the court of appeals misapplied *Thornburg v. Gingles, supra*, by "[e]xamining the issue of racial bloc voting under the totality of the circumstances existing in Bleckley County." Petition, p. 15. More specifically, the county claims that it was error

for the court of appeals to consider: (1) the fact that "blacks have neither sponsored candidates nor run for county-wide positions in Bleckley County's government;" (2) the testimony of seasoned local black politicians "that it is next to impossible for a black candidate to win an at-large, county-wide election in Bleckley County;" (3) the fact that blacks were elected in Cochran after the city adopted district elections; (4) the levels of support in the county for racist or pro-segregation candidates (J. B. Stoner, Lester Maddox, and George Wallace); and, (5) socio-economic disparities and the history of segregation in the county. Petition, pp. 16, 18-9. To the contrary, the court of appeals correctly followed the decision of this Court.

A. Non-Statistical Evidence May Prove Racial Bloc Voting

Gingles was a challenge to six multi-member house and senate districts for the North Carolina general assembly and involved 14 counties, including the major metropolitan counties of Mecklenburg, Durham, and Wake. Given the large populations and number of jurisdictions involved, the plaintiffs were able to collect and evaluate data from 53 general assembly primary and general elections involving black candidacies over a period of three different election years. 478 U.S. at 35 ns.1 & 2, 52-3. Because of the number of jurisdictions and precincts, the *Gingles* plaintiffs were also able to make extensive use of homogeneous precinct and ecological regression analysis in examining the elections for the existence of polarized voting.

In small counties such as Bleckley election data and the opportunities for statistical analysis will necessarily be more limited than in *Gingles*. In addition, since precincts were consolidated in 1984 it has become impossible to do regression or homogeneous precinct analysis in Bleckley County, while the sole commissioner system has operated in such a discriminatory manner that it has prohibited or discouraged blacks from even running for the office.

In recognition of facts such as these, and to insure that Section 2 be given "the broadest possible scope," *Chisom v. Roemer, supra*, 111 S.Ct. at 2368, particularly in jurisdictions with the most dilutive election systems, *Gingles* provides that "[w]here a minority group has never been able to sponsor a candidate, courts *must* rely on other factors [than elections] that tend to prove unequal access to the electoral process." 478 U.S. at 57 n.25 (emphasis supplied).[8] Moreover, where the minority has begun just recently to sponsor candidates, "the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim." *Id.*[9]

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[8] The "sponsored candidates" language of the court of appeals, to which Bleckley County objects as being "directly contrary to the *Gingles* mandate," Petition, p. 16, was, of course, taken verbatim from *Gingles* itself.

[9] Respondents believe footnote 25 in *Gingles* means at least two things: (1) racial bloc voting may be proved by factors other than election data; and, (2) where racial bloc voting cannot be shown because, for example, a system is so discriminatory that the minority has never participated in elections as

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The *Gingles* requirement that where election data is sparse or unavailable a court must look at other factors in determining the existence of polarized voting, or access to the electoral process, is simply a restatement of pre-existing voting rights case law which was incorporated into Section 2 by the 1982 amendments of the Voting Rights Act. As this Court noted in *Gingles*, 478 U.S. at 44 n.8, "amended § 2 was designed to restore the 'results' test – the legal standard that governed voting discrimination cases prior to our decision in *Mobile v. Bolden*." Cases cited in the Senate Report as illustrative of the results standard were *White v. Regester*, 412 U.S. 755 (1973), *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973), and nearly two dozen other appellate court decisions applying a totality of circumstances analysis to claims of minority vote dilution. 478 U.S. at 36 n.4, 44 n.8; S.Rep. No. 417, 97th Cong., 2d Sess. 23 n.79 (1982); Voting Rights Act Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary United States Congress Second Session on S.53, S.1761, S.1975, S.1992, and H.R. 3112, 97th Cong., 2d Sess. 1216-26 (1982) (listing and analyzing the appellate court decisions).

One of the appellate court decisions applying the results test incorporated into Section 2 by Congress was

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voters or candidates, or where the evidence is simply sparse, a Section 2 violation can still be established by proof that the minority is denied equal access to the electoral process based upon the totality of circumstances identified in the legislative history of Section 2. See, S.Rep. No. 417, supra, at 29. As the court of appeals found, the evidence in this case "conclusively establishes a pattern of racially polarized voting." App. 84-5. Apart from that, the totality of circumstances support a violation of the equal access standard of Section 2 identified in footnote 25.

Nevett v. Sides, 571 F.2d 209, 223 n. 18 (5th Cir. 1978) (relying upon *White v. Regester*, *supra*, and *Zimmer v. McKeithen*, *supra*). Voting Rights Act Hearings, *supra*, at 1221. *Nevett* held that under a "results" analysis a court may determine the presence or not of racial bloc voting based upon the totality of circumstances existing in a given jurisdiction, including the history of segregation and the defeat of qualified black candidates. According to the court:

> Bloc voting may be indicated by a showing . . . of the 'existence of past discrimination in general . . . , large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts.' . . . Of course, bloc voting may be demonstrated by more direct means as well, such as statistical analyses, . . . or the consistent lack of success of qualified black candidates.

Accord, United States v. Marengo County Commission, 731 F.2d 1546, 1567 n.34 (11th Cir. 1984) ("[w]e have stated that '[b]loc voting may [also] be indicated by a showing under *Zimmer* of . . . past discrimination in general . . . or by 'the consistent lack of success of qualified black candidates' ").

Under Section 2 results analysis few black candidacies are both evidence of, and a response to, polarized voting. In *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (11th Cir. 1984), for example, the court held that "the lack of black candidates is a likely result of a racially discriminatory system." Other courts applying the results test have reached similar conclusions that a

depressed level of minority candidacies is evidence of polarization. *See, e.g., Citizens for a Better Gretna v. City of Gretna*, 636 F.Supp. 1113, 1119-20 1135 (E.D.La. 1986); *Jeffers v. Clinton*, 730 F.Supp. 196, 213 (E.D.Ark. 1989); *Hendrix v. McKinney*, 460 F.Supp. 626, 632 (M.D.Ala. 1978) (racial bloc voting "undoubtedly discourages black candidates because they face the certain prospect of defeat"); *Wilkes County, Ga. v. United States*, 450 F.Supp. 1171, 1174 (D.D.C. 1978) (finding polarized voting based on aggregate vote totals and the fact that "there have been very few black candidates for office").[10]

Bleckley County is incorrect in saying that the court of appeals erred in taking into account the fact that black candidates were elected in municipal elections after the City of Cochran adopted districts. The county's error is in thinking that how elections *actually work* is irrelevant in determining if voting is racially polarized. The fact that blacks consistently lose in county and city elections at-

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[10] While the plurality in *Gingles* indicated that "only the race of the voter, not the race of the candidate, is relevant to vote dilution analysis," 478 U.S. at 68, all the elections relied upon by the Court in finding racial bloc voting were black-white contests, in which the race of the candidate was necessarily taken into account. 478 U.S. at 80-3. Lower courts have interpreted *Gingles* as meaning that "the race of the candidate is in general of less significance than the race of the voter – but only within the context of an election that offers voters the choice of supporting a viable minority candidate." Citizens for a Better Gretna v. City of Gretna, La., 834 F.2d 496, 502 (5th Cir. 1987). Accord, Campos v. City of Baytown, Texas, 840 F.2d 1240, 1245 (5th Cir. 1988). As for the all white contests in Bleckley County that did not offer voters the choice of supporting a viable minority candidate, they are of little use in determining the existence of racially polarized voting.

large, but win in county and city elections from majority black districts, is highly relevant evidence that voting is along racial lines. In *Lodge v. Buxton*, 639 F.2d 1358, 1378 (5th Cir. 1981), the court of appeals, in making a finding that voting was racially polarized in Burke County, Georgia, found it "of particular significance . . . that in the one city election in which city councilmen were elected from single-member districts, a Black was elected." The court of appeals' finding that voting was polarized was expressly affirmed by this Court *sub nom. Rogers v. Lodge*, 458 U.S. 613, 623, 627 (1982), in which the Court applied the *White v. Regester* totality of circumstances analysis. *Also see, Jackson v. Edgefield County, South Carolina*, 650 F.Supp. 1176, 1198 (D.S.C. 1986) (the success of black candidates in local district elections "confirmed the political unity of each racial group and the cohesiveness of its voting behavior").

The testimony of experienced local politicians is also highly relevant under Section 2 in showing the existence or not of racial bloc voting. In *Gingles* itself the Court relied not only upon statistical analysis, but "the testimony of lay witnesses" to prove that voting was racially polarized. *Gingles v. Edmisten*, 590 F.Supp. 345, 367 (E.D.N.C. 1984), *aff'd sub nom. Thornburg v. Gingles, supra*, 478 U.S. at 41. Other courts have similarly considered lay testimony in determining the presence of racial bloc voting. *See, e.g., Carrollton Branch of NAACP v. Stallings, supra*, 829 F.2d at 1558 (polarized voting can be established "through the clearly acceptable means of a bivariate regression analysis and the testimony of lay witnesses"); *McDaniels v. Mehfoud*, 702 F.Supp. 588, 593

(E.D.Va. 1988) ("[r]acially polarized voting can be established through both anecdotal evidence and electoral analysis"); *Windy Boy v. County of Big Horn*, 647 F.Supp. 1002, 1013 (D.Mont. 1986) ("[t]he testimony of observers of Big Horn County politics confirms that it is racially polarized"); *Sierra v. El Paso Independent School District*, 591 F.Supp. 802, 807 (W.D.Tex. 1984) (racial bloc voting may be shown by "lay testimony from . . . practical politicians who are thoroughly familiar with voting behavior"); *Jackson v. Edgefield County, South Carolina School District, supra*, 650 F.Supp. at 1198 ("[e]ven more persuasive to the Court than the experts' quantitative analysis of polarization on voting behavior is the testimony by the local politicians who, through their participation in the political processes, have the direct observation and are familiar with the voting practices and voting patterns in Edgefield County").

Gingles and the other decisions embodying the results standard adopted by Congress hold that the kind of evidence presented by respondents in this case to prove the existence of racial bloc voting is relevant and must be considered, particularly where election data is sparse or unavailable. The court of appeals applied correct legal standards, standards which have been consistently applied by this Court and the lower federal courts in vote dilution cases. Based upon the evidence, the court of appeals' finding that voting in Bleckley County was racially polarized is not clearly erroneous. *Thornburg v. Gingles, supra*, 478 U.S. at 79 (the clearly erroneous standard

"is the appropriate standard for appellate review of a finding of vote dilution").[11]

CONCLUSION

The petition presents no important or unsettled issue. The court of appeals correctly followed *Gingles*, and its decision is consistent with those of other lower courts. Review is not warranted; the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[11] There is no merit to the county's argument that the court of appeals should have remanded the case to the district court for correction of error. Petition, p. 21. A reviewing court may properly make a finding of liability where, as here, "the record permits only one resolution of the factual issue." Pullman-Standard v. Swint, 456 U.S. 273, 292 (1982).